IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
WRIT PETITION NO.2334 OF 2006

M/s.Karnani Exports Pvt.Ltd. & anr. .. .. Petitioners
v/s.
The Union of India & ors. .. Respondents

Mr.Anil Balani for petitioners.

Mrs.S.V.Bharucha with Mr.M.D.Sharma for respondents.

CORAM : H.L. GOKHALE &
J.P. DEVADHAR, JJ.

DATED : 8th November 2006

P.C. :

1. Rule. Heard the learned Counsel for the parties.

2. The petitioners herein had imported certain knitting machines under the Export Promotion Capital Goods Scheme (for short "EPCG Scheme") in December 1995. The petitioners were expected to effect export under the EPCG licence which was issued to the petitioners. It is the case of the petitioners that the necessary exports were in fact effected. Yet a fiscal liability was imposed on the petitioners by the 4th respondent to the tune of Rs.13,25,000/- by passing an ex-parte order on 24th January 2003 on the ground that the export obligation was not fulfilled. The

petitioners carried the matter in Appeal to the Appellate Authority i.e. the Additional Director General of Foreign Trade. The Additional Director rejected the Appeal on the ground that the Appeal was time barred and also that the pre-deposit of the penalty amount was not made.

3. Mr.Balani appearing for the petitioners points out that after the order in original was passed, the petitioners had pointed out to the Authority concerned that the export obligation had been fulfilled and in fact, the then Assistant Director General of Foreign Trade by his letter dated 16th July 2004 had recorded in a letter addressed to the Director General of Foreign Trade that the 1st petitioner-Firm had submitted the required documents towards the fulfilment of export obligation. In that letter, he had requested to allow his office to review the case so that the case can be closed. It is, therefore, submitted by Mr.Balani that, in fact, the order in original itself requires to be reviewed and recalled and there was no occasion for the petitioners to proceed further leading to the impugned order.

4. A question, therefore, arises as to

whether the letter dated 16th July 2004 was issued after necessary verification of the documents. An affidavit has been filed by the same officer i.e. Mr.A.S. Shinde who is now Deputy Director General of Foreign Trade. In para-3 of his affidavit he has stated that the required documents towards the fulfilment of export obligation were verified by him but he has added two words thereafter viz. "at random". Mr.Shinde has thereafter stated that, that was the reason for him to write the letter dated 16th January 2004 seeking instructions to review the order which was passed earlier. He has in fact enclosed a letter dated 2nd June 2003 from one Mr.Birbal signed for the Director General of Foreign Trade which at the bottom thereof records in instruction No.3 to the following effect:-

> " If export obligation completed write to Additional Director General to give permission to review."

5. Mr.Shinde is present in Court and he states that though this is the function of the Assistant Director there is no person appointed as Assistant Director as of now. This work falls within his jurisdiction and he will verify the

documents which were submitted by the petitioners evidencing honouring of the export obligation. He states that it will be done within about two weeks. In that view of the matter, the order in original dated 24th January 2003 as well as the order passed in Appeal dated 10th March 2006 will both stand set aside. The officer concerned will scrutinise the documents submitted by the petitioners and thereafter pass appropriate orders. If required, he will call the petitioners for explanation of the documents.

6. Rule is made absolute in the above terms. No order as to costs.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)